



## MINUTES

**City of Scottsdale  
JUDICIAL APPOINTMENTS ADVISORY BOARD  
Regular Meeting  
6:00 p.m., Thursday, January 27, 2011  
Human Resources Pinnacle Training Room  
7575 E. Main Street**

- PRESENT:** Paul Rybarsyk (appointed Chair)  
Donald Alvarez (appointed Vice Chair)  
Ira Ehrlich  
Kenneth Weingarten
- ABSENT:** Judge Jean Hoag  
Judge John Rea  
Francis Scanlon
- STAFF:** Valerie Wegner  
Judy Dewey  
Jay Osborn  
Sherry Scott, Deputy City Attorney (absent from 6:30 to 7:15 p.m.)  
Terry Welker, Interim Executive Director of HR
- OTHERS:** Gordon Griller (departed at 6:30 p.m.)  
Christopher Lonn (departed at 6:30 p.m.)

### **CALL TO ORDER**

The meeting was called to order at 6:04 p.m.

### **ROLL CALL**

A formal roll call confirmed the presence of a quorum as noted above.

#### **1. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON AUGUST 28, 2010**

Mr. Osborn corrected the motion on page 4 in the first paragraph so that it referred to the duties and responsibilities of the "City Court," rather than "JAAB." On page 8, in the fourth paragraph, he corrected that the line should refer to "board meetings," instead of "executive sessions."

**BOARD MEMBER EHRLICH MOVED TO APPROVE THE MINUTES OF THE  
AUGUST 18, 2010 PUBLIC MEETING AS AMENDED. BOARD MEMBER  
WEINGARTEN SECONDED. THE MOTION CARRIED BY A VOTE OF FOUR (4) TO  
ZERO (0). JUDGES HOAG AND REA AND BOARD MEMBER SCANLON WERE  
ABSENT.**

## **2. ACKNOWLEDGEMENT OF NEW JUDICIAL APPOINTMENTS ADVISORY BOARD MEMBERS**

New Board Members Alvarez, Ehrlich, and Weingarten introduced themselves.

## **3. ACKNOWLEDGEMENT OF OUTGOING BOARD MEMBERS**

The Board thanked outgoing members for their service. Mr. Lonn said serving on the board was a privilege. JAAB's efforts have contributed to a better justice system. Mr. Griller said Scottsdale has one of the best municipal courts he has ever been associated with. JAAB performs a crucial function in that it allows the court system to be fair and unbiased in its work. The Board expresses the community's voice on the performance of its judges and the quality of justice that they receive. Judges must be independent, not beholden to special interests or politicians. They have to decide cases based on the law and the facts of the case. JAAB's stewardship ensures that the Court continues to do those things.

Board Member Ehrlich inquired about the qualities of a good judge. Mr. Griller responded that courts have the responsibility to ensure that disputes are handled without delay. Much evidence is based on what people remember, so cases should proceed from filing to disposition with reasonable speed; not too fast to rush justice, nor too slow to delay justice. Even a small court such as Scottsdale's has a tremendous set of complex relationships that must be navigated well to be effective. Judges are leaders that set the tone for the entire court.

In response to Board Member Weingarten's inquiry, Mr. Griller responded that the biggest challenges he faced as a JAAB member were recommending the new judges to the City Council, ensuring judicial independence, and ensuring that those appointed were of the highest quality. Assessing judicial performance is difficult, especially the task of obtaining enough feedback to make the results representative of the community as a whole. The Board has learned through trial and error the best ways to ensure that the City Council understands the issues associated with the Court and the judges. The new Board must also work to keep Council informed. He recommended that a representative meet with them in person to discuss JAAB issues, rather than relying on written reports. He said Scottsdale's bench should be more diverse, since diversity gives the Court a much firmer grounding in how they present themselves to the community. People need to know that they are going to get a fair trial, and that is difficult to do if the bench lacks diversity.

## **4. ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON**

**BOARD MEMBER ALVAREZ MOVED TO APPROVE THE NOMINATION OF BOARD MEMBER RYBARSYK AS CHAIR OF THE JUDICIAL APPOINTMENTS ADVISORY BOARD. BOARD MEMBER EHRLICH SECONDED. THE MOTION CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). JUDGES HOAG AND REA AND BOARD MEMBER SCANLON WERE ABSENT.**

**BOARD MEMBER WEINGARTEN MOVED TO APPROVE THE NOMINATION OF BOARD MEMBER ALVAREZ AS VICE CHAIR OF THE JUDICIAL APPOINTMENTS ADVISORY BOARD. BOARD MEMBER EHRLICH SECONDED. THE MOTION CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). JUDGES HOAG AND REA AND BOARD MEMBER SCANLON WERE ABSENT.**

## **5. ETHICS TRAINING**

The Board received their annual ethics training. In response to an inquiry from Chair Rybarsyk, Mr. Osborn explained that if the Board were to appoint a subcommittee consisting of two people, whenever those two talk about subcommittee business, they constitute a quorum of the subcommittee and are subject to the Arizona Open Meeting Law.

## **6. APPROVAL OF 2010 JAAB ANNUAL REPORT**

**BOARD MEMBER WEINGARTEN MOVED TO APPROVE THE 2010 JUDICIAL APPOINTMENTS ADVISORY BOARD ANNUAL REPORT AS PRESENTED. BOARD MEMBER EHRLICH SECONDED. THE MOTION CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). JUDGES HOAG AND REA AND BOARD MEMBER SCANLON WERE ABSENT.**

## **7. DISCUSSION OF TIMELINES FOR UPCOMING JUDICIAL APPOINTMENTS**

Chair Rybarsyk noted that three judges are coming up for reappointment this year in May, September, and October. JAAB will also be reviewing applications for the Presiding Judge position, as Judge Morgan will be retiring in March of 2012. He proposed consolidating the schedule to cut down on the amount of work. The September and October reappointments could be handled at the same meeting. Going through the applications for Presiding Judge would take quite some time.

Ms. Wegner explained the process of judicial reappointments. Staff requests a list of all the defendants, witnesses, jurors, plaintiffs, and attorneys that appeared in each judge's court for a 90-day period close to the end of their term. An outside consultant conducts surveys and tabulates the responses, including those from Court personnel. JAAB reviews the results in a public meeting and interviews the candidates. Mr. Osborn noted that JAAB also holds an executive session to discuss the survey comments, the Commission on Judicial Conduct Report, and their due diligence with attorneys who have practiced in front of the judge, because of the confidential nature of the information.

Ms. Wegner said staff recommends that JAAB conduct its public hearing on Judge Orest Jejna by March 24, to ensure that there is enough time to meet Council's schedule. Because of the Presiding Judge recruitment process, staff also recommends that the reappointment process for the remaining two judges begin earlier than usual. One month after Judge Jejna's process starts, the Board could begin working on Judge Blake's, and then on Judge Olcavage's case one month after that. If one of the incumbent judges is chosen as Presiding Judge, JAAB would have to find a person to fill the fourth spot.

Board Member Ehrlich inquired whether all three judges desired reappointment. Ms. Wegner explained that staff has heard them express interest in reappointment, and they might all be interested in the Presiding Judge opening as well.

Mr. Welker reported meeting with Judge Morgan to hear his concerns about continuity within the court. He is retiring in March of 2012, and would like to have a certain amount of overlap with his replacement. He requests that the person be appointed by January 1, 2012. The Judge also indicated he would like to see all the reappointments happen at the same time. City Council, however, said they would prefer that each judge stand on

their own merit in different meetings. Judge Morgan also anticipates that all three judges would seek reappointment, and would apply for the Presiding Judge position. He encouraged JAAB to do an aggressive search.

Mr. Welker inquired whether the Board felt an accelerated timeline was in the best interest of the process. Board Member Alvarez felt that would largely depend on staff availability, and asked whether they would be able to handle the accelerated schedule. Chair Rybarsyk said an accelerated schedule would be feasible for JAAB. Ms. Wegner added that the one-month intervals were designed to allow staff enough time to handle the work. Mr. Osborn said he understood the practical considerations of an accelerated schedule, but noted that moving reappointments back several months would be a departure from past practice. City Council would also have to agree on the accelerated timeline and the three-month overlap period. Mr. Welker said he would get a response from City Council before the next JAAB meeting.

Board Member Ehrlich expressed concern that the accelerated schedule would not allow enough time for a national search, which can be very time-consuming. JAAB will have to do one nationwide search at a minimum. Ms. Dewey felt that an executive recruitment could be done by November. Board Member Alvarez inquired whether JAAB would interview every applicant, or would HR select the best candidates. Ms. Dewey explained that they are first screened by JAAB. Mr. Osborn noted that the candidate would have to be a member of the Arizona State Bar, which would automatically narrow the search. They would also be required to establish residency in Scottsdale within a given time frame. Ms. Scott noted that the Charter recently changed, and that the City Judge was taken out of the Charter Officer's section. She said she would report back on the applicable changes.

Chair Rybarsyk noted that the terms of four members of JAAB expire during this year as well. Ms. Wegner explained that the proposed timeline allows for a majority of the work to be finished by the time their terms expire.

Board Member Weingarten inquired whether the surveys could be made available online. Ms. Wegner said such a change could not be implemented in time for these reappointments, but it could be considered for the future.

**BOARD MEMBER EHRLICH MOVED TO APPROVE THE TIMELINE FOR THE UPCOMING JUDICIAL REAPPOINTMENT OF JUDGE OREST JEJNA AS PRESENTED. BOARD MEMBER ALVAREZ SECONDED. THE MOTION CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). JUDGES HOAG AND REA AND BOARD MEMBER SCANLON WERE ABSENT.**

**BOARD MEMBER WEINGARTEN MOVED TO APPROVE THE TIMELINE FOR THE UPCOMING JUDICIAL REAPPOINTMENT OF JUDGE JAMES BLAKE AS PRESENTED. BOARD MEMBER EHRLICH SECONDED. THE MOTION CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). JUDGES HOAG AND REA AND BOARD MEMBER SCANLON WERE ABSENT.**

**BOARD MEMBER ALVAREZ MOVED TO APPROVE THE TIMELINE FOR THE UPCOMING JUDICIAL REAPPOINTMENT OF JUDGE JOSEPH OLCAVAGE AS PRESENTED. BOARD MEMBER WEINGARTEN SECONDED. THE MOTION CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). JUDGES HOAG AND REA AND BOARD MEMBER SCANLON WERE ABSENT.**

## **8. DISCUSSION OF TIMELINE FOR PRESIDING JUDGE RECRUITMENT**

**BOARD MEMBER WEINGARTEN MOVED TO APPROVE THE TIMELINE FOR THE RECRUITMENT OF A REPLACEMENT FOR PRESIDING JUDGE B. MONTE MORGAN AS PRESENTED. BOARD MEMBER ALVAREZ SECONDED. THE MOTION CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). JUDGES HOAG AND REA AND BOARD MEMBER SCANLON WERE ABSENT.**

Mr. Welker noted that if one of the three judges up for reappointment gets promoted to Presiding Judge, their vacant position would have to be filled. He proposed trying to capture people who are interested in both types of positions. Their cover sheets should indicate where their interest lies. As the Board interviews potential candidates they could consider their eligibility for both positions. If a replacement becomes necessary, it would be easy to reconvene the Board to recommend candidate(s) to move forward for interviews with City Council.

Chair Rybarsyk questioned the need to fill vacancies so quickly. If the case load demands it, a pro tem judge could be hired for a few months. The dual purpose application process could be awkward. If one of the judges really stands out during their reappointment process, the Board's job will be that much easier during the Presiding Judge recruitment effort. In response to an inquiry from Board Member Ehrlich, Mr. Welker explained that candidates who are not selected for Presiding Judge could be contacted afterwards to see if they would be interested in an Associate Judge position. They would then submit a cover letter asking to be considered based on the information they already provided.

Board Member Ehrlich inquired whether other judges are considered during the reappointment of Associate Judges. Mr. Osborn explained that JAAB's task is to determine whether to recommend a judge for reappointment. Council would then act on those recommendations. Depending on the outcome, JAAB could begin soliciting additional applications as necessary.

Board Member Ehrlich requested an agenda item to discuss staggering the judicial terms. As it stands, JAAB is in the situation of reappointing every judge on the bench within one year. Mr. Osborn noted that such a proposal would require an amendment to the City Code. Board Member Ehrlich suggested that any new judge be given an initial appointment for a one-year trial period, which would effectively stagger their terms. Chair Rybarsyk felt it would be difficult to attract people to a job for only one year. Ms. Scott noted that this problem would perpetuate itself and should be looked at.

## **9. DISCUSSION OF INITIATIVES RECOMMENDED BY THE JAAB FOR IMPROVEMENTS TO THE JUDICIAL REAPPOINTMENT PROCESS AND DISCUSSION OF NEXT STEPS**

Mr. Osborn noted that a subcommittee formulated several recommendations to improve the reappointment process, and invited the Board to discuss whether to implement them.

Mr. Osborn noted that recommendation 1-A, to recognize the City Court as part of an integrated Arizona judicial branch, was similar to a proposal the Charter Review Advisory Task Force considered, but did not accept. Ms. Scott said this issue generated considerable debate, and the end result was scaled back considerably. JAAB could still recommend this change to the City Council, however. Mr. Osborn said he would prepare a draft for the Board's consideration at their next meeting.

Chair Rybarsyk stated that JAAB must emphasize that City Council Members cannot interfere with what the judges are doing. This is a fairly common problem for municipal court systems around the country. Ms. Scott noted that the Task Force and City Council were provided legal advice on this issue. Judge Morgan also attempted to educate the Task Force on this issue, and the City Attorney's Office provided advice. Some of the Task Force argued that since it is already the law, it does not need to be included in the Charter. The Council is well aware that the court must remain independent and that judicial decisions should be free from political maneuvering.

Chair Rybarsyk commented that recommendation 1-B was to have a representative from JAAB meet with the Mayor and City Council Members following formal recommendations. JAAB would determine who their representative would be at the time the recommendation is made. Ms. Wegner said she could work that determination into the action item.

Ms. Wegner said recommendation 1-C was to create a subcommittee to evaluate the survey instruments used in the reappointment process, and possibly revise them in the future. To fit this into the tight schedule already proposed for this year would be difficult. Board Member Alvarez proposed that JAAB take notes on possible improvements in the course of reviewing the surveys, with the intent of discussing them at a later meeting. Mr. Welker invited JAAB to suggest all such improvements along the way for later discussion.

Chair Rybarsyk noted that it would be too late to implement recommendation 1-D this year, but it could be addressed during the discussion on improvements. He reviewed that recommendation 1-E was to emphasize to Council Members that appeal rates and change of judge notices should not be used to determine the competency of particular judges. Mr. Osborn suggested that this type of background information be presented in the form of a written summary, to be distributed when the JAAB representative does their walk around.

Chair Rybarsyk said recommendation 1-G would have to be put on hold this year due to the tight schedule. The same thing could be said about recommendation 1-H on restoring four-year terms for judges. Mr. Welker noted that a new Council is in place, and the dynamics have shifted. He would talk to them to see how they feel about restoring the old terms. It would be easier to attract good candidates by offering longer terms.

Chair Rybarsyk said the remaining recommendations would be revisited in the future.

## **10. FUTURE AGENDA ITEMS**

Ms. Wegner noted that the next three meetings are scheduled for March 24, April 21, and June 2.

## **ADJOURNMENT**

With no further business to discuss, being duly moved and seconded, the meeting of the Judicial Appointments Advisory Board adjourned at 8:11 p.m.

Respectfully submitted,  
Valerie Wegner  
HR Office Coordination Manager

Reviewed by,  
Paul Rybarsyk  
JAAB Chairperson